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4 MARLON J. BLACHER, CDCR No.
5 G50077, HCSO No. 2020-23339,
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7 Petitioner,

8 v.

9 STATE OF CALIFORNIA,
10 Respondent.

11 Case No. [20-cv-07119-CRB](#) (PR)

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13 **ORDER DISMISSING PETITION FOR**
14 **A WRIT OF HABEAS CORPUS**

15 Petitioner, a state prisoner at the Richard J. Donovan Correctional Facility (RJD) in San
16 Diego, California (but temporarily in the custody of Hillsborough County Sheriff's Office (HCSO)
17 pending Florida criminal charges) pursuant to a 2009 conviction and sentence from Contra Costa
18 County Superior Court, has filed a second or successive petition for a writ of habeas corpus under
19 28 U.S.C. § 2254 challenging various aspects of his 2009 conviction and sentence, including the
20 restitution order imposed by the superior court. His first petition challenging his 2009 conviction
21 and sentence was denied on the merits on September 22, 2015. See Blacher v. McEwen, No. 12-
22 cv-4775-RMW (N.D. Cal. Sept. 22, 2015) (order denying petition for a writ of habeas corpus
23 under § 2254 on the merits).

24 A second or successive petition may not be filed in this court unless petitioner first obtains
25 from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to
26 consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order
27 from the Ninth Circuit and this court is "without power" to entertain his second or successive
28 petition unless he first receives authorization from the Ninth Circuit. Chades v. Hill, 976 F.3d
1055, 1056-57 (9th Cir. 2020). The instant petition accordingly is DISMISSED without prejudice

1 to refiling if petitioner obtains the necessary order from the Ninth Circuit.¹

2 Based on petitioner's affidavit of poverty filed in Blacher v. Pollard, No. 20-cv-07057-
3 CRB, he is granted leave to proceed in forma pauperis under 28 U.S.C. § 1915 in this action..

4 The clerk is instructed to terminate all pending motions as moot and to close this action.

5 **IT IS SO ORDERED.**

6 Dated: December 16, 2020

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8 CHARLES R. BREYER
9 United States District Judge

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United States District Court
Northern District of California

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26 ¹ To the extent petitioner claims RJD officials are unlawfully withdrawing funds from his
27 prison trust account pursuant to an unlawful restitution order, he must bring said claim, if at all, in
28 a civil rights complaint under 42 U.S.C. § 1983. See Ramirez v. Galaza, 334 F.3d 850, 859 (9th
Cir. 2003) ("habeas jurisdiction is absent, and a § 1983 action proper, where a successful
challenge to a prison condition will not necessarily shorten the prisoner's sentence"). He may not
challenge a restitution order on federal habeas review. See Bailey v. Hill, 599 F.3d 976, 984 (9th
Cir. 2010).